circumstances that affect the ability of a significant number of members to submit trade information on time. Any such suspension of the rule must be in writing and must be published by the Exchange for distribution to the membership.

The Exchange anticipates that this authority would be used very infrequently. The Exchange represents that it has invoked Rule 2.30 suspensions only once a year, on average, since the rule was adopted in 1991. In every case, the CBOE represents that the suspensions have occurred on a day when there was both extraordinary volume and a trading surge at the end of the day. Therefore, according to the Exchange, it is likely that any suspension under proposed Rule 2.26 would ordinarily be matched with a suspension under Rule 2.30.

The third proposed change to the Pilot Program would add a fine schedule to CBOE Rule 17.50(g) for substantial and repeated failures to file trade data on the trade date, in contravention of Rule 6.51. As proposed, any member who exceeds the as-of-add rate considered nominal under Rule 2.26¹³ by three times or more for two consecutive months would be subject to a fine of \$250 for the first offense, \$500 for the second offense, and \$1,000 for each offense thereafter occurring during any 12-month period.14 Fines under this proposal would therefore currently be triggered for an individual member whenever that member's as-of-add submissions equal or exceed 7.2% of total trade submissions in each of two consecutive months, while fines to clearing firms would be triggered whenever a clearing member's as-of-add submissions equal or exceed 3.6% of total trade submissions for each of two consecutive months.15 The fines imposed pursuant to Rule 17.50(g) would be in addition to any fees due under Rule 2.26 and would serve to penalize those members who submit the greatest number of excessive as-of-add trades.

The Exchange believes that the proposed fines would fairly and

effectively supplement the fees assessed under Rule 2.26, by providing a clear sanction in those circumstances in which discipline is clearly appropriate. As structured, fines would be imposed when late submissions by a particular member or members reflect a pronounced pattern of persistent and excessive use of as-of-adds. Absent such a pattern, the Exchange believes, that the assessment of fees is sufficient and that fines should ordinarily not be imposed. Of course, in any circumstance in which a member's use of as-of-adds suggests that it may be appropriate to impose more severe disciplinary sanctions than would be provided for under Rule 17.50(g), the member would be subject to investigation and discipline in accordance with Chapter XVII.¹⁶

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given

accelerated effectiveness pursuant to Section 19(b)(2) ¹⁸ of the Act.¹⁹

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).20 Specifically, the Commission finds, as it did in originally approving the Pilot Program and the subsequent extensions,²¹ that imposing fees on members who submit as-of-adds for more than a prescribed percentage of transactions in any month is likely to: (1) Offset the carrying costs incurred by the Exchange and Exchange members as a result of these post-trade date submissions: (2) make trade comparisons on the CBOE more efficient in terms of the time and expense involved in trade processing; and (3) reduce the risk exposure to investors and Exchange clearing members. Additionally, the Commission continues to believe that the Pilot Program does not raise any due process concerns because of the availability of the verification and appeals processes pursuant to Chapter XIX of CBOE's rules.22

The Commission believes that the proposed caps on the monthly as-of-add fees that can be assessed against members adequately addresses one of the concerns previously noted by the Commission of assessing inordinately high, or punitive, monthly "fees" for violations of Exchange rules.²³ By placing the proposed caps on the maximum monthly as-of-add fees, the Commission believes that it is appropriate for the Exchange to continue to classify these assessments as fees, rather than requiring the Exchange to institute disciplinary proceedings and to assess fines against members each time they submit as-of-adds in violation of Exchange rules.24 Additionally, the proposal to incorporate the Pilot Program into the Minor Rule Plan under Rule 17.50 further minimizes the Commission's concerns about classifying these assessments as fees rather than fines.²⁵ The proposal

²⁴ The Commission notes that its findings herein are limited to as-of-add submissions. For violations of other Exchange rules, it may be inappropriate to allow the Exchange to assess fees to encourage compliance rather than instituting disciplinary proceedings against members for such violations.

²⁵ The Commission notes that although the proposal to incorporate the Pilot Program into the

¹³See *supra* notes 6 and 7.

¹⁴See Amendment No. 1, *supra* note 3. These fines would be assessed on a rolling basis. For example, an individual member who is cited for a first offense for a minor rule violation for exceeding the nominal allowable number of as-of-adds by three or more times during each of December and January would be fined for a second offense if that member again exceeds the allowable number of asof-adds by three or more times during February. Telephone conversation between Dan Schneider, Schiff Hardin & Waite, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on December 8, 1994.

¹⁵ See supra notes 6 and 7.

¹⁶ The CBOE has agreed to issue a Regulatory Circular to members describing the portions of the proposal approved herein, describing the portion of the proposal to incorporate the Pilot Program into the Minor Rule Plan, emphasizing that serious instances or extended periods of late submissions will be subject to investigation and possible disciplinary action notwithstanding Rule 17.50(g), and highlighting that all members assessed a fee pursuant to the Pilot Program may submit a request for verification and may appeal the fees assessed pursuant to Chapter XIX of the CBOE Rules. ¹⁷ 15 U.S.C. 78(b)(5) (1988).

¹⁸15 U.S.C. 78s(b)(2) (1988).

¹⁹See Amendment No. 1, *supra* note 3.

^{20 15} U.S.C. 78f(b)(5) (1988).

²¹See *supra* note 5.

²² Id.

²³ Id.